

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
NORTHWESTERN DIVISION**

United States of America,)
)
Plaintiff,) **ORDER GRANTING MOTION TO**
) **AMEND JUDGMENT**
vs.)
) Case No. 4:08-cr-008
Kenneth Nicholas Allery,)
)
Defendant.)

Before the Court is the Government’s “Motion for Miscellaneous Relief: Final Determination of Restitution” filed on October 20, 2008. See Docket No. 36. The Government moves the Court to amend the judgment (Docket No. 35), dated July 21, 2008, to include restitution in the amount of \$4,321.74 to be payable to Indian Health Services. The Defendant has not responded to the motion.

Pursuant to 18 U.S.C. § 3664(d)(5), if the victim’s losses are not ascertainable ten days prior to sentencing, the Government or the probation officer shall inform the Court of this fact and the Court shall set a date for the final determination of the victim’s losses that is not to exceed ninety days after sentencing. At the sentencing hearing held on July 21, 2008, the Government provided Government Exhibit 1 to support the \$4,321.74 restitution amount. The Court advised the Probation Office to further examine whether Indian Health Services was filing a claim for restitution and, therefore, did not order restitution.

The Government filed its motion for a final determination of restitution on October 20, 2008, which is within the ninety-day deadline required under 18 U.S.C. § 3664(d)(5). The Government contends that Indian Health Services has since informed the Government that it seeks restitution in

the amount of \$4,321.74. The Court finds that the Judgment should be amended to include restitution in the amount of \$4,321.74 to be payable to Indian Health Services.

The Court **GRANTS** the Government's motion (Docket No. 36) and **ORDERS** the Clerk of Court to file an amended Judgment directing the defendant to pay a total of \$4,321.74 in restitution to Indian Health Services, P.O. Box 160, Belcourt, North Dakota 58316.

IT IS SO ORDERED.

Dated this 18th day of November, 2008.

/s/ Daniel L. Hovland

Daniel L. Hovland, Chief Judge
United States District Court